

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICKAIL MYLES,
Plaintiff,
v.
COUNTY OF SAN DIEGO, et. al,
Defendants.

Case No.: 15cv1985-JAH-BLM

**ORDER DENYING DEFENDANT'S
APPLICATION FOR LEAVE TO
FILE MOTION TO CONSIDER
DISPUTED JURY INSTRUCTIONS
[Doc. No. 163]**

On January 19, 2022, the parties appeared before the Court for a telephonic pretrial conference during which the Court provided deadlines regarding the parties' submission of proposed jury instructions. Specifically, the Court ordered the parties to meet and confer regarding jury instructions no later than April 4, 2022; file any motions regarding jury instructions on or before May 9, 2022; file responses to the motions on or before May 30, 2022, and any replies on or before June 9, 2022; and scheduled a hearing on jury instructions for June 22, 2022 at 10:30 am. On February 18, 2022, the Court issued an order restating the deadlines.

1 On May 10, 2022, Defendants filed proposed special jury instructions.¹ The Court
2 ordered the Clerk of Court to strike the filing as untimely. In response to the Court's order
3 striking the filings, Defendants filed the pending application on May 16, 2022. Plaintiff
4 filed an opposition on May 18, 2022.

5 Defendants contend their failure to timely file their motion "was brought on by a
6 number of factors including the plaintiff's counsel late response to meet and confer as well
7 as the Court order which deviated significantly from the local rules." Defs' Application at
8 2. They maintain, without any discussion or argument in support, that the information in
9 their proposed disputed special jury instructions is critical to the proper resolution of the
10 trial.² Similar to their response to the Court's order striking their improperly filed amended
11 motions *in limine*, Defendants also contend their failure to comply with the Court's
12 deadline is the fault of counsel and any penalty should not flow to Defendants themselves.³

13 In his opposition, Plaintiff maintains counsel for the parties participated in a
14 telephonic conference on April 4, 2022, to discuss motions *in limine* and jury instructions
15 pursuant to the Court's order, during which Plaintiff's counsel explained they would not
16 be submitting any special jury instructions and Defendants' counsel informed them they
17 would be submitting special jury instructions and would send them to Plaintiff's counsel
18 for consideration. He further maintains counsel received an email from Defendants after
19 regular business hours on May 6, 2022, with their proposed special jury instructions,
20 leaving only one (1) business day to meet and confer. Plaintiff contends, despite having
21 insufficient time to meaningfully meet and confer, counsel reviewed Defendants' proposed
22 instructions and notified Defendants' counsel by email that they were unacceptable and
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25 ¹ Defendants filed the proposed special instructions without seeking leave although they were aware
26 they were filed beyond the deadline.

27 ² Defendants are silent as to why the model jury instructions are not sufficient.

28 ³ This position is unsupported by case law. *See Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 369 (1993) (explaining the Supreme Court has "held that clients must be held accountable for the acts and omissions of their attorneys.") (citing *Link v. Wabash R. Co.*, 370 U.S. 626, 633-34 (1962)).

1 they would oppose any motion for the special jury instructions. Plaintiff argues given the
 2 great task of preparing the case for trial, the burden of additional motion work is
 3 unacceptable and prejudicial.

4 This is Defendants' second failure to comply with this Court's order in a short period
 5 of time without justification.⁴ In the instant application, Defendants improperly attempt
 6 to place blame on this Court and the opposing party. Defendant insists the Court "deviated
 7 significantly" from the Local Rules in setting the deadline for filing any motion for special
 8 jury instructions. However, as noted by Defendants in the first paragraph of their
 9 application, the local rule states, in relevant part, "[u]nless otherwise ordered, the parties
 10 must, not less than seven (7) calendar days prior to the date on which the trial is scheduled
 11 to commence" serve and file proposed jury instructions. CivLR 16.1.f.9 (*emphasis added*).
 12 The rule clearly indicates courts may set a different deadline and its placement at the
 13 beginning of the rule intimates it is likely a court will set a different deadline. In accordance
 14 with the rule, this Court set a deadline and notified the parties of the deadline at the pretrial
 15 conference held in January 2022 and in a written order on February 18, 2022.

16 Defendants also contend Plaintiff's counsel's late meet and confer brought about
 17 their failure to comply with the Court-ordered deadline. They explain that

18 The parties met and conferred regarding jury instructions. Finally, on May 9, 2022,
 19 plaintiff's counsel indicated that he would not agree with defendants' proposed
 20 special jury instructions.

21 Defs' Application at 2; Clarke Decl.¶ 4. Defendants, however, neglect to explain they did
 22 not provide the proposed instructions to counsel until after regular business hours on May
 23 6, 2022, the Friday before the Monday deadline for filing the motion. This lack of candor

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 26 ⁴ On April 28, 2022, Defendant sought leave to file amended motions *in limine* previously stricken by
 27 the Court as untimely. Although the Court found Defendants failed to provide sufficient excuse for
 28 filing the motions beyond the deadline, the Court found it more appropriate to address the pertinent
 information surrounding evidentiary issues in advance of trial to promote the efficient resolution of the
 case and granted Defendants' application.

1 is particularly disingenuous and egregious in light of the Court's April 4, 2022 deadline to
 2 meet and confer. It gives the false impression the meet and confer occurred by the Court-
 3 ordered deadline and the proposed jury instructions were provided to Plaintiff's counsel on
 4 or near that date, giving Plaintiff sufficient time to raise his objections in advance of the
 5 motion deadline.

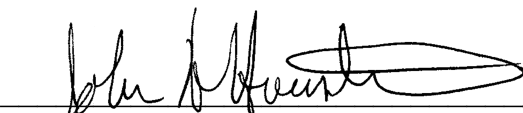
6 Defendants continue to disregard the Court's deadlines which provide the parties
 7 ample time to prepare for trial and are designed "to promote the just, efficient and
 8 economical determination" of this action. CivLR 1.1. Recognizing the need of courts "to
 9 establish deadlines to foster the efficient treatment and resolution of cases", the Ninth
 10 Circuit explained the courts efforts

11 will be successful only if the deadlines are taken seriously by the parties, and the
 12 best way to encourage that is to enforce the deadlines. Parties must understand that
 13 they will pay a price for failure to comply strictly with scheduling and other orders,
 14 and that failure to do so may properly support severe sanctions and exclusions of
 evidence.

15 *Wong v. Regents of University of California*, 410 F.3d 1052, 1060 (9th Cir. 2005).
 16 Defendants attempt to place blame on the Court and Plaintiff's counsel fails. They provide
 17 no reasonable excuse for their failure to meet the deadline. Additionally, their failure to
 18 comply with the Court's deadline for filing its motion for special jury instructions shortly
 19 after failing to comply with the Court's deadline for filing motions *in limine* demonstrates
 they do not take the deadlines seriously.⁵

20 Accordingly, IT IS HEREBY ORDERED Defendants' *ex parte* application for leave
 21 to file a motion to consider disputed jury instructions is DENIED.

22 DATED: May 19, 2022

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 24 _____
 JOHN A. HOUSTON
 25 UNITED STATES DISTRICT JUDGE
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 27 _____

28 ⁵ The parties are reminded of their ongoing duty to comply with the Court's orders. *See* CivLR 83.1.